

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA, :
:
-v- :
:
CESAR LOPEZ-SANCHEZ, :
Defendant. :
-----X

URGENT
ELECTRONICALLY

6-25-2014
03 Cr. 1483-08
(DLC)

MEMORANDUM
OPINION & ORDER

DENISE COTE, District Judge:

Cesar Lopez-Sanchez ("Lopez") filed on May 1, 2014 a motion for clarification of his 2008 sentence, which he asserts is brought pursuant to Rule 36, Fed.R.Crim.P. For the following reasons, the motion is denied.

Lopez was sentenced on September 26, 2008 principally to 140 months' imprisonment "to run concurrent with the sentence imposed on October 20, 2005 in California." Lopez explains that the Bureau of Prisons has credited him with the time he has served since being taken into federal custody in March of 2007 pursuant to a writ. He seeks through this motion credit for time served in state custody from July 12, 2005 to March of 2007.

As explained in an Order of October 2, 2012, which responded to defendant's prior motion for clarification, at the time this Court imposed sentence on the defendant, neither the Court nor the parties were aware that the California state

sentence had been discharged on March 11, 2007, or ten days after the defendant's first appearance in this district on the writ. As a result, "the Bureau of Prisons has given the defendant credit for all time he had spent in federal custody . . . [and] it need make no further calculation to effect the Court's intent." The October 2, 2012 Order stated that the "Court did not intend, and did not indicate a desire, that the defendant's federal sentence be credited with time the defendant had already served in state custody."


The Court declined to issue a certificate of appealability from the October 2, 2012 Order, and Lopez filed an appeal. The Second Circuit dismissed the appeal for failure to file an opening brief and appendix. The Court again declines to issue a certificate of appealability. The defendant has not made a substantial showing of a denial of a federal right and appellate review is, therefore, not warranted. Tankleff v. Senkowski, 135 F.3d 235, 241 (2d Cir. 1998); Rodriguez v. Scully, 905 F.2d 24, 24 (2d Cir. 1990). The Court also finds pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith. Coppedge v. United States, 369 U.S. 438, 444 (1962).

CONCLUSION

Defendant's May 1, 2014 motion is denied. For the
aforementioned reasons, a certificate of appealability is also
denied.

SO ORDERED:

Dated: New York, New York
June 25, 2014



DENISE COTE
United States District Judge

COPIES SENT TO:

Cesar Lopez-Sanchez
58575-054
Taft
Correctional Institution
P.O. Box 7001/A2A
Taft, CA 93268